

§ 9701.509

§ 9701.509 Powers and duties of the HSLRB.

(a) The HSLRB may, to the extent provided in this subpart and in accordance with regulations prescribed by the HSLRB—

(1) Resolve issues relating to the scope of bargaining and the duty to bargain in good faith under § 9701.518 and conduct hearings and resolve complaints of unfair labor practices concerning—

(i) The duty to bargain in good faith; and

(ii) Strikes, work stoppages, slowdowns, and picketing, or condoning such activity by failing to take action to prevent or stop such activity;

(2) Resolve disputes concerning requests for information under § 9701.515(b)(5) and (c);

(3) Resolve exceptions to arbitration awards involving the exercise of management rights, as defined in § 9701.511, and the duty to bargain, as defined in § 9701.518. The HSLRB must conduct any review of an arbitral award in accordance with the same standards set forth in 5 U.S.C. 7122(a), which is not waived for the purpose of this subpart but which is modified to apply to this section and to read “HSLRB” wherever the term “Authority” appears;

(4) Resolve negotiation impasses in accordance with § 9701.519;

(5) Conduct *de novo* review of legal conclusions involving all matters within the HSLRB’s jurisdiction;

(6) Have discretion to evaluate the evidence presented in the record and reach its own independent conclusions with respect to the matters at issue; and

(7) Assume jurisdiction over any matter concerning Department employees that has been submitted to FLRA pursuant to § 9701.510, if the HSLRB determines that the matter affects homeland security.

(b) The HSLRB may issue binding Department-wide opinions, which may be appealed as if they were decisions of the HSLRB in accordance with § 9701.508(h).

(c) In issuing opinions under paragraph (b) of this section, the HSLRB may elect to consult with the Authority.

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(d)(1) In any matter filed with the HSLRB, if the responding party believes that the HSLRB lacks jurisdiction, that party must timely raise the issue with the HSLRB and simultaneously file a copy of its response with the Authority in accordance with regulations established by the HSLRB. The HSLRB’s determination with regard to its jurisdiction in a particular matter is final and not subject to review by the Authority.

(2) If a matter involves one or more issues that are appropriately before the HSLRB and one or more issues that are appropriately before the Authority, the matter must be filed with the HSLRB in accordance with its procedures. The HSLRB will have primary jurisdiction over the matter. The HSLRB will decide those issues within its jurisdiction and will promptly transfer the matter to the Authority for resolution of any remaining issues.

§ 9701.510 Powers and duties of the Federal Labor Relations Authority.

(a) The Federal Labor Relations Authority may, to the extent provided in this subpart and in accordance with regulations prescribed by the Authority, make the following determinations with respect to the Department:

(1) Determine the appropriateness of units pursuant to the provisions of § 9701.514;

(2) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of 5 U.S.C. 7111 relating to the according of exclusive recognition to labor organizations, which are not waived for the purpose of this subpart but which are modified to apply to this section;

(3) Conduct hearings and resolve complaints of unfair labor practices under § 9701.517(a)(1) through (4) and (b)(1) through (4), and in accordance with the provisions of 5 U.S.C. 7118, which is not waived for this purpose but which is modified to apply to this section;

(4) Resolve exceptions to arbitrators’ awards otherwise in its jurisdiction and not involving the exercise of management rights under § 9701.511, the

duty to bargain, as defined in §9701.518, and matters under §9701.521(f); and

(5) Review HSLRB decisions and issue final decisions pursuant to §9701.508(h).

(b) In any matter filed with the Authority, if the responding party believes that the Authority lacks jurisdiction, that party must timely raise the issue with the Authority and simultaneously file a copy of its response with the HSLRB in accordance with regulations established by the Authority. The Authority must promptly transfer the case to the HSLRB, which will determine whether the matter is within the HSLRB's jurisdiction. If the HSLRB determines that the matter is not within its jurisdiction, the HSLRB will return the matter to the Authority for appropriate action. The HSLRB's determination with regard to its jurisdiction in a particular matter is final and not subject to review by the Authority.

(c) Judicial review of any Authority decision is as prescribed in 5 U.S.C. 7123, which is not waived.

§9701.511 Management rights.

(a) Subject to paragraphs (b), (c), and (d) of this section, nothing in this subpart may affect the authority of any management official or supervisor of the Department—

(1) To determine the mission, budget, organization, number of employees, and internal security practices of the Department;

(2) To hire, assign, and direct employees in the Department; to assign work, make determinations with respect to contracting out, and to determine the personnel by which Departmental operations may be conducted; to determine the numbers, types, grades, or occupational clusters and bands of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, methods, and means of performing work; to assign and deploy employees to meet any operational demand; and to take whatever other actions may be necessary to carry out the Department's mission; and

(3) To lay off and retain employees, or to suspend, remove, reduce in grade, band, or pay, or take other disciplinary

action against such employees or, with respect to filling positions, to make selections for appointments from properly ranked and certified candidates for promotion or from any other appropriate source.

(b) Management is prohibited from bargaining over the exercise of any authority under paragraph (a) of this section or the procedures that it will observe in exercising the authorities set forth in paragraphs (a)(1) and (2) of this section.

(c) Notwithstanding paragraph (b) of this section, management will confer with an exclusive representative over the procedures it will observe in exercising the authorities set forth in paragraphs (a)(1) and (2) of this section, in accordance with the process set forth in §9701.512.

(d) If an obligation exists under §9701.518 to bargain, confer, or consult regarding the exercise of any authority under paragraph (a) of this section, management must provide notice to the exclusive representative concurrently with the exercise of that authority and an opportunity to present its views and recommendations regarding the exercise of such authority under paragraph (a) of this section. However, nothing in this section prevents management from exercising its discretion to provide notice as far in advance of the exercise of that authority as appropriate. Further, nothing in paragraph (d) of this section establishes an independent right to bargain, confer, or consult.

(e) To the extent otherwise required by §9701.518 and at the request of an exclusive representative, the parties will bargain at the level of recognition (unless otherwise delegated below that level, at their sole and exclusive discretion) over—

(1) Appropriate arrangements for employees adversely affected by the exercise of any authority under paragraph (a)(3) of this section and procedures which management officials and supervisors will observe in exercising any authority under paragraph (a)(3) of this section; and